



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, FEBRUARY 22, 1984

CR
202-633-2019

The Department of Justice charged today that New York State Police Academy officials violated a 1979 nondiscrimination order by creating an environment in which black and Hispanic recruits did poorly and were frequently held up to public ridicule.

Assistant Attorney General William Bradford Reynolds, head of the Department's Civil Rights Division, said a motion to enforce the court order was filed in U.S. District Court in Albany, New York.

The motion said 93.8 percent of the white men completed the training class in 1981, while only 50 percent of the black and Hispanic men completed it.

The disparate success rates resulted from discriminatory practices at the Academy in violation of the decree, the motion said.

"Through disparate treatment of and derogatory remarks concerning minorities, members of the Academy staff created an environment where minorities were expected to do poorly and where they were frequently held up to public ridicule," an accompanying memorandum said.

The memorandum also said staff members made racist comments and told racist jokes in front of the recruits and minority recruits were disciplined far more frequently than white recruits.

(MORE)

The motion asked the court to order the state to extend job offers and to provide back pay and retroactive seniority to black and Hispanic recruits who would have been appointed state troopers in June, 1981, had the state complied with the decree.

#

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 77-CV-343
)
STATE OF NEW YORK, et al.,)
)
Defendants.)
)

MOTION OF THE PLAINTIFF UNITED STATES
FOR AN ORDER ENFORCING THE FINAL DECREE
AND GRANTING SUPPLEMENTAL RELIEF

Plaintiff United States hereby moves this Court to

1. Find that the defendants State of New York, et al., have violated the nondiscrimination provisions (Paragraph 1) of the final decree entered on October 19, 1979, by discriminating against black and hispanic recruits in the State Police Academy in 1981; and
2. Order relief as may be appropriate to make whole the victims of the discriminatory practices and to prevent future violations, pursuant to Section VII of the final decree.

Plaintiff United States requests the Court to set a period of discovery on this Motion and upon completion of discovery, to conduct an evidentiary hearing on the Motion.

This motion is based upon reports submitted by the defendants pursuant to the decree, and upon depositions and other discovery conducted by plaintiff pursuant to the decree.

A memorandum in support of this Motion is attached.

Respectfully submitted,

David L. Rose
Kerri Weisel
Attorneys
Civil Rights Division
U. S. Department of Justice
Washington, D. C. 20530

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF NEW YORK, et al.,)
)
Defendants.)
)

CIVIL ACTION NO. 77-CV-343
(Judge Foley)

MEMORANDUM OF THE PLAINTIFF UNITED STATES
IN SUPPORT OF ITS MOTION FOR AN
ORDER ENFORCING THE FINAL DECREE
AND GRANTING SUPPLEMENTAL RELIEF

INTRODUCTION

Plaintiff United States has moved this Court to:

1. Find that the defendants State of New York, et al., have violated the nondiscrimination provisions (Paragraph 1) of the Final Decree entered on October 19, 1979, by discriminating against black and hispanic recruits at the State Police Academy in 1981; and
2. Order relief as may be appropriate to make whole the victims of the discriminatory practices and to prevent future violations.

STATEMENT

A. On October 19, 1979, this Court entered a Decree in this case which included in Paragraph 1 injunctive relief against the New York State Police with respect to its employment of blacks, hispanics and women as troopers. The facts set forth below are based upon information obtained from the defendants pursuant to the decree, and upon depositions.

Beginning in February and ending in June of 1981 the New York State Police held a basic training course for the 144th, 145th and 146th classes at the New York State Police Academy. Of the 97 white males who began the basic training course, 91, or 93.8%, completed it. Of the 74 black and hispanic males who began the basic training course 37, or 50.0%, completed it. Thus the black and hispanic male pass rate was only 53.3% of the white male pass rate.

In the two subsequent academy courses, ending in March 1982 and March 1983, the New York State Police was able to retain black and hispanic male recruits in substantially the same proportion as white male recruits. In these two academies 88.0% and 75.6%, respectively, of the black and hispanic males who began the training courses completed them as compared to 94.7% and 89.9%, respectively, of the white males. The black and hispanic male pass rates in these classes were 92.9% and 84.0%, respectively, of the white male pass rates.

The disparate success rates for white and for black and hispanic (hereafter sometimes referred to as "minority") recruits in the 144th, 145th and 146th classes resulted, we believe the record shows, from discriminatory practices at the 1981 New York State Police Academy in violation of the Decree entered in this case on October 19, 1979.

B. Deposition testimony of minorities who attended the 1981 Academy reveals that the minority recruits in the Academy were treated differently from the white recruits.

1. Through disparate treatment of and derogatory remarks concerning minorities, members of the Academy staff created an environment where minorities were expected to do poorly and where they were frequently held up to public ridicule.

a. Before the regular Academy training began, all members of the 144th, 145th and 146th classes were given standardized "intelligence" tests. Sgt. Roger V. Fulton, who was to be one of the instructors at the Academy, analyzed the results of these tests and assigned IQ scores based on the results (Deposition of Roger V. Fulton, pp. 5-8). The minority recruits as a whole received lower IQ scores than the white recruits as a whole.

As a result of his role in this testing process, Sgt. Fulton had access to the results of unvalidated "intelligence"

tests. The counselors and noncommissioned officers also had access to the personnel files where this information was kept (Deposition of Carl P. Baker, p. 59). It appears that based on this information, Sgt. Fulton, and possibly others, pre-judged the minority recruits and made it clear that they expected many of them to do poorly in the Academy (Deposition of Ronald Dutes, pp. 16-17; Deposition of Irby Williams, pp.18-19).

b. Instructors and other staff members made racist comments and told racist jokes in front of the recruits (Deposition of Derrick Bishop, p. 24A; Deposition of Richard Ashby, p. 49). A recruit of Haitian origin had his name and accent regularly made fun of by instructors and counselors and was referred to as an ignorant boat person by staff members at the Academy (Deposition of Ronald Dutes, p. 9, p. 37; Deposition of Richard Ashby, p. 10A).

Hypotheticals used in class often cast minorities as criminals (Deposition of Richard Ashby, p. 51) and on at least one occasion an instructor referred to a person as a "nigger" during his lecture (Deposition of Dana Harper, p. 13). After the departure of a black guest speaker, another white instructor made fun of the speaker and mimicked him before the recruit class in a racially stereotyped and derogatory manner (Deposition of Peter Leslie, pp. 15A-17).

c. A number of instructors and other staff members stated or implied in front of recruits that the minorities and women had no place at the Academy and were there only because standards had been lowered to meet the requirements of the Court's order (Deposition of Anthony Justin, p. 29; Deposition of Derrick Bishop, pp. 19-20; Deposition of William White, pp. 24-25; Deposition of Richard Ashby, p. 55; Deposition of Dana Harper, p. 28).

d. A form of punishment that was imposed on recruits by the Academy staff was assignment to work detail. While a recruit was assigned to work detail, all of his or her free time was taken up with various assigned projects (Deposition of Richard Ashby, pp. 39-40). The minority recruits were placed on work detail and otherwise disciplined far more frequently than the white recruits (Deposition of Anthony Justin, pp. 13, 18; Deposition of Howard Tyson, pp. 10, 14-15; Deposition of William White, p. 13). Although blacks and hispanics constituted a minority of the class, the work details always contained many more minorities than whites; and on two occasions were made up entirely of minorities (Deposition of Derrick Bishop, p. 22; Deposition of Ronald Dutes, p. 35; Deposition of Richard Ashby, pp. 45-48). The white recruits who were placed on work detail were given significantly shorter

periods of punishment (Deposition of Derrick Bishop, pp. 22-23; Deposition of Irby Williams, p. 29).

There were no standards as to what conduct would cause a recruit to be placed on work detail (Deposition of Carl P. Baker, pp. 65-66; Deposition of Steven D. Brignoli, p. 9, pp. 21-22; Deposition of Derrick Bishop, p. 23; Deposition of Richard Ashby, pp. 32, 36). One black recruit was told by Trooper Brignoli that he was being placed on detail because he had probably done something wrong that Trooper Brignoli did not know about (Deposition of Richard Ashby, pp. 37-38). Minorities would often be placed on detail or otherwise disciplined for conduct for which white recruits were not disciplined (Deposition of Derrick Bishop, pp. 9, 7A-8A; Deposition of Richard Ashby, p. 33). For example, two black recruits were placed on work detail for being late to a class, although they were in their seats when the bell rang, while a white recruit who entered the classroom after the bell had rung was not placed on work detail (Deposition of Derrick Bishop, p. 9; Deposition of Richard Ashby, p. 33). Generally the recruits on work detail were not told why they were on work detail or who had placed them there (Deposition of Derrick Bishop, p. 23; Deposition of Ronald Dutes, p. 34; Deposition of Richard Ashby, p. 43).

e. There was apparently an Academy policy against what were referred to as "cliques." The staff implemented this policy by splitting up groups of minorities or women who were sitting together in the cafeteria, but not by splitting up groups of whites who were sitting together (Deposition of Anthony Justin, pp. 31-32, 37; Deposition of Derrick Bishop, pp. 20-21; Deposition of Howard Tyson, pp. 11-12; Deposition of Pablo Mendez, pp. 12, 15; Deposition of Ronald Dutes, p. 33; Deposition of Irby Williams, pp. 21-23, 43; Deposition of Dana Hooper, pp. 12-13). The white class leaders were encouraged to assist in implementing this policy (Deposition of Richard Ashby, pp. 21A, 31A-32A).

f. On several occasions training instructors directed minorities to change seats before or during an examination, apparently because they believed that the minorities were cheating or that they intended to cheat (Deposition of Ronald Wyatt, pp. 24-25; Deposition of Pablo Mendez, p.13; Deposition of Richard Ashby, p. 18A). White recruits were not so reassigned.

g. The minority recruits who had not qualified with firearms were singled out and asked before the entire Academy why they had not qualified, while the names of the white recruits who had not qualified were not mentioned (Deposition of Richard Ashby, p. 19A).

One black recruit who was having trouble qualifying was selected by the firearms instructors for special treatment. He was assigned to and had his name printed on what had been labeled the "a---h--- pole." Whenever he went for firearms training he was directed to that pole (Deposition of Richard Ashby, pp. 57-59). Another black recruit was made to carry a "pet rock" with him at all times during firearms training (Deposition of Derrick Bishop, p. 4A-6A).

2. The atmosphere established by the Academy staff, as described above, permitted, indeed encouraged, the white recruits to harass the minority recruits and to consistently rate them lower than whites on the peer ratings.

a. With staff knowledge, and without staff intervention, the white recruits told racist jokes and made racist slurs (Deposition of Derrick Bishop, p. 24A; Deposition of Peter Leslie, p. 9A; Deposition of Irby Williams, p. 17; Deposition of Richard Ashby, pp. 16A-17A). One of the white recruits involved in this harassment regularly referred to himself, without staff censure, as the "resident racist" (Deposition of Richard Ashby, p. 54).

One example of staff tolerance of such treatment occurred when black recruit, Richard Ashby, was called a "nigger" by white recruit, Robert Binns (Deposition of Richard Ashby, pp. 3A-6A).

When Ashby reported the incident to Lt. Baker, the Lieutenant told him that if he found Ashby to be lying he would expel him from the Academy, but if he found Ashby's accusation to be true he would expel Binns. Lt. Baker then asked Ashby for his proof. Ashby produced two witnesses, both white. Baker interviewed the witnesses and Binns, and found that Ashby had been telling the truth - Binns had called him a nigger. Baker decided, however, that since the epithet had been the result of an argument, both recruits were at fault. To rectify the situation, Lt. Baker ordered that Ashby and Binns become roommates. To accomplish this, Ashby, the black recruit, was ordered to pack his belongings and change places with Binns' black roommate, although it had been Binns who had called Ashby a "nigger." Binns and Abruzzo, Ashby's white roommate, simply remained where they had been.

b. At some point in the Academy the staff ordered a group of recruits to go on what has been described as a twelve mile run. This run was considered by the recruits to be a form of punishment (Deposition of Carl P. Baker, pp. 79-81; Deposition of Ronald Dutes, p. 31). All or nearly all of the recruits required to run were minorities (Deposition of Derrick Bishop, pp. 25A-27A, 37a; Deposition of Ronald Dutes, pp. 12-13, 31; Deposition of Irby Williams, pp. 20-21).

The selection of those who were to run was based on a vote by the recruits (Deposition of Derrick Bishop, pp. 25A-27A, 37A; Deposition of Carl P. Baker, pp. 79-81). Not surprisingly, given the atmosphere at the Academy, most of those rated lowest by their peers were minorities. Peer ratings were compiled three times during the course of the academy and rating information was available to the staff members who administered the run (Deposition of Carl P. Baker, pp. 58-59).

c. During the early weeks of the Academy the counselors frequently tore apart the recruits' rooms for various infractions or for other reasons. After a period of time the counselors ceased doing this but several of the minority recruits continued to have their rooms torn apart by white recruits (Deposition of Derrick Bishop, pp. 29A-30A; Deposition of Ronald Dutes, p. 29; Deposition of Richard Ashby, pp. 18-28). When the minorities approached a counselor concerning the problem, he said that he could do nothing to stop it (Deposition of Richard Ashby, pp. 18-28).

C. The disproportionate amount of time spent by minorities on work detail and the time spent by minorities putting together rooms that had been torn apart by white recruits took from them much valuable study time (Deposition of Derrick Bishop, p. 21A; Deposition of Ronald Dutes, pp. 25, 29;

Deposition of Richard Ashby, pp. 18-28, 44). In addition, the conduct of the staff made clear to the minorities that they were not wanted and that they were not expected to succeed.

D. Plaintiff gave the defendants timely notice of its concerns about the administration of the training academy in 1981 and has conducted some discovery on the issues raised. Subsequently, the parties have met in an effort to resolve the issue of the State's compliance with the non-discrimination provisions of the Final Decree but such efforts have proved unsuccessful. Therefore, the United States has moved this court for resolution of the matter and for such relief as may be appropriate to effectuate the requirements of the Final Decree, Title VII, the Revenue Sharing Act and the Crime Control and Safe Streets Act.

ARGUMENT

Part VII of the Final Decree entered by this Court on October 19, 1979 provides that the Court retain jurisdiction of the action addressed by the Decree for such further relief or other orders as may become necessary to ensure implementation of and compliance with the relief granted in the Decree.

It is well established that a Court of the United States has broad discretion to enforce a decree upon a party's non-compliance. See, System Federation v. Wright, 364 U.S. 642, 647-48 (1961); United States v. Swift & Co., 286 U.S. 106, 119 (1932); Officers for Justice, et al. v. Civil Service Comm'n of the City & County of San Francisco, No. 82-4079, slip op. at 3

(9th Cir. May 16, 1983); Teas v. Twentieth Century-Fox Film Corporation, 413 F.2d 1263, 1266-67 (5th Cir. 1969).

The basic concepts for relief in cases involving violations of equal employment opportunity laws and decrees are settled. An Order issued by the Court to enforce its previously entered decree may include appropriate injunctive provisions, plus record keeping and reporting provisions and such other relief as may be appropriate to ensure the full enjoyment of rights to equal employment opportunity. Int. Brotherhood of Teamsters v. United States, 431 U.S. 324, 361 (1977).

Upon a finding of discrimination, the Court should order the State to extend job offers and to provide back pay and retroactive seniority to individuals who would have been appointed State Troopers in June, 1981 had the State complied with the Final Decree, Title VII and the non-discrimination provisions of the Revenue Sharing Act and the Crime Control and Safe Streets Act. Albemarle Paper Co. v. Moody, 422 U.S. 405, 417-419 (1975); Franks v. Bowman Transportation Co., 424 U.S. 747, 764 (1976); EEOC v. Local 638, Sheet Metal Workers, 532 F.2d 821, 832 (2nd Cir. 1976); United States v. United States Steel Corp., 520 F.2d 1043, 1055 (5th Cir. 1975); Kyriazi v. Western Elec. Co., 465 F. Supp. 1141 (D. N.J. 1979); United States v. City of Philadelphia, 499 F. Supp. 1196 (E.D. Pa.

1980). Indeed, this court ordered similar relief in the Final Decree of which the United States hereby seeks enforcement. In order to determine which of those individuals would have been appointed to the position of State Trooper in June, 1981, but for the State's action, the Court should, after determining liability in the initial proceeding on this motion, order "Stage II" proceedings on the matter of individual relief, if the parties cannot reach agreement on the matter. International Brotherhood of Teamsters v. United States, 431 U.S. 324, 361 (1977).

The United States therefore, based on the facts set out above, requests that the Court set a period for discovery and conduct an evidentiary hearing on this motion, and then enter an order finding that the defendants State of New York, et al., have violated the nondiscrimination provision of the final decree entered October 19, 1979, preventing future violations, and setting forth a procedure for determining the individual victims of the discriminatory practices and making them whole.

CONCLUSION

For the foregoing reasons, this Court should find that the State has violated the Final Decree, as well as Title VII and the non-discrimination provisions of the Revenue Sharing Act

and the Crime Control and Safe Streets Act, and enter an appropriate remedial order.

Respectfully submitted,

DAVID L. ROSE
KERRI WEISEL
Attorneys
Civil Rights Division
U. S. Department of Justice
Washington, D. C. 20530
(202) 633-3861